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LETTER DATED 30 JANUARY 1998 FROM THE CHAIRMAN OF THE SECURITY COUNCIL COMMITTEE ESTABLISHED BY RESOLUTION 661 (1990) CONCERNING THE SITUATION BETWEEN IRAQ AND KUWAIT ADDRESSED TO THE PRESIDENT OF THE SECURITY COUNCIL

I have the honour to transmit herewith, pursuant to paragraph 9 of resolution 1143 (1997) of 4 December 1997, the report of the Security Council Committee established by resolution 661 (1990) of 6 August 1990 concerning the situation between Iraq and Kuwait on the refining and clarifying of its working procedures. The report was adopted by the Committee on 30 January 1998.

(Signed) António MONTEIRO
Chairman
Security Council Committee established by resolution 661 (1990) concerning the situation between Iraq and Kuwait

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Annex

Report of the Security Council Committee established by resolution 661 (1990) concerning the situation between Iraq and Kuwait pursuant to paragraph 9 of resolution 1143 (1997)

1. In paragraph 9 of its resolution 1143 (1997) of 4 December 1997, the Security Council requested the Committee established by resolution 661 (1990) of 6 August 1990 concerning the situation between Iraq and Kuwait to continue, in close coordination with the Secretary-General, to refine and clarify working procedures in order to expedite the approval process and to report to the Council no later than 30 January 1998.

2. Pursuant to paragraph 12 of resolution 986 (1995) of 14 April 1995, the Committee on 8 August 1996 adopted procedures to be employed by the Security Council Committee established by resolution 661 (1990) concerning the situation between Iraq and Kuwait in the discharge of its responsibilities as required by paragraph 12 of Security Council resolution 986 (1995).

3. In the course of its implementation of procedures during the past year, the Committee adopted further points of understanding with regard to the processing of humanitarian applications submitted under the oil-for-food programme.

4. With the adoption of Security Council resolution 1143 (1997) on 4 December 1997, the Committee started working on refining and clarifying its working procedures with a view to accelerating the approval process of applications to send humanitarian supplies to Iraq. Based on the Committee's existing procedures, including the points of understanding thus far adopted, the Committee has decided upon the following measures, which would contribute further to the expeditious processing and approval of applications as called for in paragraph 9 of resolution 1143 (1997):

(a) General suggestions

(i) Orientation sessions for all States and interested international organizations should continue to be organized by the Secretariat on a periodic basis when necessary so as to provide guidance and assistance for delegations in the submission of applications. These sessions should also include briefings on the following: (a) approval process of resolution 986 (1995)- and 661 (1990)-related applications; (b) approval process of letters of credits for contracts; and (c) the work of the Committee in general. An information kit of relevant documentation will also be provided by the Secretariat;

(ii) The Secretariat will continue to prepare and circulate to Committee members weekly reports on the status of applications (status list), which should include information on applications not yet circulated to the Committee as well as applications from United Nations agencies;

(iii) Required delivery date of goods that are time-sensitive (harvest season, new school year, etc.) should be clearly stated in the applications. In this regard, comments by experts in the Secretariat will also be made available to Committee members;

(b) Processing and approval of applications

(i) Unless the Committee decides otherwise on a case-by-case basis, the Secretariat will continue processing applications on a first-come, first-served basis. The same criteria apply to all applications on the question as to whether they meet the Committee's requirements for circulation. Applications could be prioritized as necessary. A list of priorities should be drawn based on (a) the current needs in the distribution plan; (b) the interrelated aspects of applications; and (c) the expected date of delivery of the supplies. Consideration should be given to the special humanitarian needs of children, pregnant women and nursing mothers, the elderly without economic or family support, displaced persons, the long-term unemployed and people with disabilities and so on, and to the development of urgent basic projects (drinking-water, hospital equipment, items that have a positive impact on the distribution process, etc.). Such priorities should be established by the Committee, in coordination with the Iraq Programme, following consultations with relevant United Nations agencies and the Iraqi authorities;

(ii) Without prejudice to the Committee's ability to decide otherwise, incomplete applications will not be circulated until clarification is obtained from the applicant State and the Permanent Mission of Iraq to the United Nations. The Secretariat will thus immediately notify both the permanent mission of the applicant State and the Permanent Mission of Iraq of the irregularities found in the documentation submitted;

(iii) In the same context, applications that are found to be inconsistent with the approved distribution plan and its amendments (for example, the items concerned are not on the categorized list annexed to the distribution plan or their quantities exceed those on the list) will not be circulated until the distribution plan is amended as necessary. The Secretariat will continue to advise the Government of Iraq on such cases as they occur, so that the latter may, if it so wish, submit necessary amendments to the distribution plan. Once the amendments are approved by the Secretary-General, they will be regarded as an integral part of the approved distribution plan;

(iv) The Secretariat should complete the processing of all applications submitted under the oil-for-food programme within two business days after they are received, provided that all relevant documents are enclosed and in order;

(v) Amendments made to such applications (contracts or purchase orders) should be manifested formally, that is, by a letter from the permanent mission of the applicant State to the Secretariat and the other party

or parties involved, with due regard to relevant commercial law and practice and Security Council resolutions;

(vi) The Committee is ready to consider applications on a project basis. Applications for the same project could be kept together during the screening and approval process, so that the full range of applications would serve as an explanatory background to a specific application. Experts within the Secretariat could, together with the Iraqi authorities, be given the task of exploring ways of grouping contracts together;

(vii) Funds allocated to applications that have been blocked will immediately be freed and used for processing further applications. Funds allocated to applications that have been placed on hold will be freed five working days after the date of the no-objection deadline and used for processing further applications. If holds are removed, or if blocked contracts are reinstated, the applications concerned will have immediate priority for the allocation of funds;

(viii) When a formal request is received from either party to declare an application null and void, the Secretariat will notify the other party and advise both parties that the application will be considered null and void after seven days, unless both parties confirm in writing that the application should be reinstated. The Secretariat, upon consultation with the parties concerned, may declare null and void an application during processing, before its circulation to the Committee, for purely technical reasons, for example, duplication. The Secretariat will inform the Committee of any contract that is declared null and void;

(ix) Applications will be screened and reviewed by the Secretariat immediately upon receipt, without regard to the actual existence of funds. The Secretariat should circulate all applications that meet the requirements of the Committee's procedures and are consistent with the distribution plan. If the Committee has no objection to a contract, the Secretariat informs the submitting permanent mission in writing that the contract is in order, that the exporter is eligible for payment from the United Nations Iraq Account and that the approval letter will be issued on the basis of the anticipated revenues as determined, by issuance of an irrevocable letter of credit for oil shipments and confirmation of the lifting of oil cargoes;

(x) When an application is put on hold or blocked, a detailed explanation of the specific reasons for this should be forwarded to the Secretariat in writing and a written notification, including the detailed explanation, should be issued within 24 hours by the Secretariat to the relevant permanent mission. Those explanations, notably those related to dual use or to other grounds pertaining to non-conformity with the distribution plan, should be reviewed by the Committee periodically in order to ascertain if any action could be taken to prevent similar situations;

(xi) Committee approval letters should include a reminder to the exporters of the need to execute the contract in the appropriate time-frame. A similar recommendation to all States engaged in the export of humanitarian goods to Iraq should be made in the form of a letter or a press release by the Chairman of the Committee;

(xii) The Committee may decide to authorize an increase to 180 days of the first extension of validity for approval letters, in addition to the initial 180-day validity period. Further extensions may be approved by the Committee on an exceptional basis. The Committee may also authorize an initial period of validity for approval letters exceeding 180 days, when acting upon the recommendation contained in the expert evaluation of the application, prepared prior to the Committee's consideration, provided that the applicant State/organization has established that the items to be exported to Iraq will require a lengthy production time;

(xiii) The Chairman, in coordination with the Secretariat, will expeditiously identify practical ways for the prompt issuance and signature of approval letters, taking into account the need to guard against tampering and forgery;

(c) During its deliberations, the Committee considered positively a number of other proposals, which, although not strictly within the terms defined by paragraph 9 of resolution 1143 (1997), the Committee believed would be of use to the Secretary-General in his review of the programme under resolution 986 (1995). These proposals are outlined below:

(i) Member States are encouraged to present applications to the Committee as soon as contracts are concluded;

(ii) The Iraqi authorities could inform the Office of the Iraq Programme as soon as contracts are signed;

(iii) A help officer could be appointed in the Secretariat to provide guidance for permanent missions and to help them in their work on the preparation and submission of applications;

(iv) The independent inspection agents (Lloyd's Register) should continue to inform the Secretary-General of their authentication of the arrival of goods within 24 hours, as provided for in paragraph 36 of the procedures. When necessary, quality tests should be completed within reasonable time limits;

(v) The Government of Iraq is invited to designate a senior banking official, within the framework of paragraph 13 of the memorandum of understanding, to undertake liaison with the Secretariat on all banking matters relating to the United Nations Iraq Account under the auspices of resolution 986 (1995). The Secretariat should keep the Committee informed of its consultations with the Iraqi banking official. The Committee should also have access to all records and statements relating to the United Nations Iraq Account;

(d) The Committee will continue to review its working procedures when necessary in the light of the implementation of the measures suggested, as well as to consider further means to improve the efficiency of the implementation of resolution 986 (1995) and subsequent resolutions related to it. Specifically, the Committee will take action on the following:

(i) The Committee will determine within 60 days the conditions under which it will delegate to the Secretariat the authority to approve, on behalf of the Committee, contracts concerning foodstuffs. Regarding medicines, the Committee will continue its work in this respect;

(ii) As an additional measure to enhance transparency in the work of the Committee, the Secretariat is requested to pursue the possibility of circulating the reports on the status of applications to all Committee members and other States, upon request, by electronic means and to report its findings to the Committee by 15 March 1998;

(iii) The Committee will continue to consider further measures, in cooperation with the Secretariat, to streamline all aspects of the procedures with regard to the opening of letters of credit by the Banque nationale de Paris, and invites the Secretariat to present a report to that effect by 15 March;

(iv) The Committee welcomes a review by the Secretariat, and possible recommendations, by 15 March, on the reimbursement of the 53 per cent account from the 13 per cent account for joint purchases.